



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
764 Horizon Drive, Building B  
Grand Junction, Colorado 81506-3946



IN REPLY REFER TO:  
ES/CO:FS/RGNF/DivideRD  
TAILS 65413-2011-CPA-0020

June 3, 2011

Dan Dallas, Forest Supervisor  
c/o Tom Malecek, Divide District Ranger  
Rio Grande National Forest  
13308 West Highway 160  
Del Norte, Colorado 81132

Dear Mr. Dallas:

The US Fish & Wildlife Service (Service) received your May 4, 2011 letter inviting our agency to participate in the subject Environmental Impact Statement (EIS) as a Cooperating Agency. We accept the invitation and look forward to receiving the appropriate documentation from you. In addition, we reviewed your Scoping Letter for the proposed land exchange between the US Forest Service (Forest Service) and the Leavell-McCombs Joint Venture, referred to as the Village at Wolf Creek Land Exchange Proposal. The Scoping Letter included two alternatives, which will result in the development of private lands owned by the applicant. The two action alternatives are likely to result in significantly different impacts to trust resources, and we recommend sufficient documentation of these differences, and the consequent impacts to the human and natural environment. In addition, it is our understanding that the no action alternative will not result in any private land development at the base of Wolf Creek Ski Area.

## General Comments

The Service recommends that the Rio Grande National Forest (RGNF) review the Memorandum of Agreement (MOA) dated August 30, 2000, to which the US Forest Service, Bureau of Land Management (BLM), the National Marine Fisheries Service, and Fish and Wildlife Service are signatory. The MOA establishes a general framework for a "streamlined" process for interagency cooperation among participating agencies, in the exercise of their responsibilities under the Endangered Species Act (ESA) of 1973, as amended (ESA; 16 U.S.C. 1531-1544)... "This streamlined process will provide a number of efficiencies, allowing the USFS to better achieve compliance with the ESA and the regulations at 50 CFR part 402 without altering or diminishing the agencies' existing responsibilities under the ESA or its regulations". Although consultation already occurs on agency actions, guidance is needed to ensure consistency and efficiency. The result will be increased up-front coordination on biological assessments including conservation measures for candidate, proposed, and listed species and proposed and designated critical habitat. It should also result in a shortened period for the appropriate consultation response once an agreed-to biological assessment has been received by the Service.

The differences between the two action alternatives are likely to result in differences in ESA compliance requirements in regards to addressing potential incidental take resulting from the alternatives and the subsequent development by the private landowner. As appropriate, Section 7 consultation will address the effects of the Federal action regardless of the alternative selected, except for no action. If the Alaska National Interest Lands Conservation Act (16 U. S. C. 3101) (ANILCA) alternative moves forward as the preferred alternative, we anticipate addressing both the Federal action (access) and the non-Federal action (development) under Section 7 of the ESA, consistent with the 2003 inter-agency agreement (Application of the Endangered Species Act to proposals for access to non-Federal lands across lands administered by the BLM and the Forest Service). However, if the land exchange becomes the selected alternative, we anticipate that the Leavell-McCombs Joint Venture will require a Habitat Conservation Plan (HCP) to permit any take of federally listed species resulting from the effects of their development. Permitting of incidental take through the HCP process will require a separate National Environmental Policy Act (NEPA) process by the Service for issuance of a Section 10 permit.

#### Federal Trust Resources

Primarily, the Service is concerned about the effects of the proposed action on federally listed endangered, threatened, proposed and candidate species, as well as other Federal trust resources, including wetlands, migratory birds, and contaminants impacting wetlands and other water resources, etc.

#### *Migratory Birds*

Please be apprised of the potential application of the Migratory Bird Treaty Act (MBTA) of 1918, as amended, 16 U.S.C. 703 et seq., and the Bald and Golden Eagle Protection Act (BGEPA) 16 U.S.C. 668 et seq., to your project. The MBTA does not require intent to be proven and does not allow for "take," except as permitted by regulations. Section 703 of the MBTA provides: "Unless and except as permitted by regulations . . . it shall be unlawful at any time, by any means or in any manner, to . . . take, capture, kill, attempt to take, capture, or kill, possess . . . any migratory bird, any part, nest, or eggs of any such bird . . . . The BGEPA prohibits, without being permitted to do so . . . knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing activities unless pursuant to regulations (and in the case of bald eagles, take can only be authorized under a permit).

Please See: Executive Order 13186 of January 10, 2001 and FS Agreement # 08-MU-1113-2400-264. We recommend surveys to determine presence of migratory birds and implementation of measures consistent with the Forest Service agreement.

#### *Contaminants*

The Service is concerned about the private land development and the potential for contaminants to enter wetlands and water bodies, including rivers and streams. The private development will likely include hard surfaces, and will require snow removal during the winter. Runoff from snowmelt and storm water run-off can contribute loadings of nutrients, metals, oil and grease, and litter that result in impacts to local water bodies. Runoff may also contain de-icing

compounds that may contribute to impacts to water bodies. We recommend an analysis of these potential water quality impacts and a detailed mitigation plan for addressing these impacts.

#### *Wetlands*

We recognize that the land exchange may result in avoidance of many of the wetlands that are present on or near private lands within the project area. However, we are also concerned about potential effects to wetland hydrology, which may indirectly affect wetland resources. In addition, we recommend that you review and implement the Service's wetland mitigation policy guidance. We recommend that the EIS include a mitigation plan for unavoidable impacts to wetland resources that will satisfy the US Army Corps of Engineers requirements for issuance of a section 404, Clean Water Act permit.

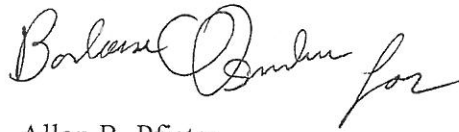
#### *Threatened and Endangered Species*

Although there may be several federally listed threatened, endangered, candidate, or proposed species directly and indirectly affected by the alternatives, we are especially concerned about the Canada lynx (*Lynx canadensis*) (lynx). The project area is within lynx habitat, and within the Wolf Creek Pass Landscape Linkage (Linkage). Development of the private land will result in significant increases in traffic volume along US Highway 160 (US 160), which passes through the Linkage as well as lynx analysis units (LAU) within the RGNF and the San Juan National Forest. We recommend an analysis of how the increased traffic volume affects use of habitat adjacent to the highway, the barrier effect of the highway resulting from high traffic volume, the likelihood of increased mortality of lynx attempting to cross US 160, and the increased barrier affect within the linkage resulting from the presence of the development within the linkage. The proposed action along with the private land development will result in the permanent loss of lynx habitat within the LAU where the project is located and within the Linkage, as well as a loss of habitat function in the surrounding forest due to increased human presence.

In the Feasibility Analysis (FA) for the proposed land exchange, some important considerations appear to be lacking. For example, Guideline 3 advises consideration of important or unique resources including wetlands, floodplains, essential big-game winter range, threatened, or endangered species habitat, etc. The information in the FA suggests that both the Federal and non-Federal parcels contain habitat for lynx. However, we do not believe that the habitat on the two parcels is of equal value. The private exchange parcel is unlikely to possess equal lynx habitat function and value, compared to the Federal parcel, since the majority of the non-Federal parcel is open meadows, or affected by developed ski terrain as part of the ski area. In addition, the private exchange parcel likely experiences heavy human use during the ski season, which we believe significantly reduces habitat value for lynx. We recommend thorough habitat evaluations of both parcels and impact analysis of development, seasonal human disturbance patterns that may influence movement patterns for lynx, and the effects of the alternatives to the LAUs and the landscape linkage. In consideration of the lynx habitat on the two exchange parcels, we believe that the land exchange and subsequent Village development will result in a net loss of lynx habitat and/or habitat function within the Wolf Creek Pass linkage. Therefore, we recommend appropriate mitigation measures to minimize lynx habitat loss within the area.

If the Service can be of further assistance, please contact Kurt Broderdorp at the letterhead address or (970) 243-2778, extension 24.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allan R. Pfister for".

Allan R. Pfister  
Western Colorado Supervisor

cc: FWS, Lakewood (Susan Linner)

KBroderdorp:FSRGNFDivideRDVillageAtWolfCreekLandExchangeCommentLetter.docx:060311:KM